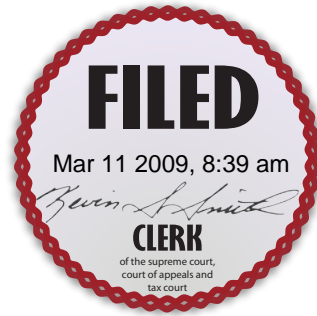


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE:

JAMES BEDREE
Fort Wayne, Indiana

APPELLEE PRO SE:

DANIEL E. SERBAN
Fort Wayne, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

JAMES BEDREE,

Appellant-Plaintiff,

vs.

DANIEL E. SERBAN,

Appellee-Defendant.

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No. 02A04-0806-CV-346

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Thomas J. Felts, Judge
Cause No. 02C01-0709-PL-110

MARCH 11, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Plaintiff-Appellant James Bedree appeals the trial court's denial of his motion to vacate order to dismiss.

We reverse.

Bedree presents one issue for our review, which we restate as: whether the trial court erred by denying Bedree's motion to vacate order to dismiss.

On September 25, 2007, Bedree filed his complaint for damages against Serban in Allen County Circuit Court. On October 17, 2007, Serban filed a motion to dismiss the lawsuit. Subsequently, on January 17, 2008, the trial court, on its own motion, ordered Bedree to show cause why the case should not be dismissed for lack of prosecution pursuant to Ind. Trial Rule 41(E). The trial court then held a hearing on Serban's motion to dismiss on April 10, 2008. The hearing was conducted by the hearing officer, who issued and signed the order of the court granting Serban's motion to dismiss and ordering the case dismissed the same day. On May 2, 2008, Bedree filed a motion to vacate the order to dismiss. The trial court denied Bedree's motion on May 5, 2008.¹ This appeal ensued.

Bedree claims that the hearing officer improperly rendered a dispositive ruling in this case by issuing the order of April 10, 2008, which dismissed his claim. Therefore, Bedree argues, the trial court erred by not granting his motion to vacate the order to dismiss issued by the hearing officer. Serban counters that when Judge Felts signed the

¹ Although we have not been provided with a copy of the trial court's order of May 5, 2008, in the materials on appeal, Serban asserts and Bedree does not dispute that Judge Felts, Judge of the Allen Circuit Court, issued the order.

order of May 5, 2008, denying Bedree's motion to vacate the order to dismiss, the hearing officer's order of April 10, 2008, was "ratified" and became a final order of the Allen Circuit Court.

Ind. Code § 33-33-2-4(b) provides that the judge of the Allen Circuit Court may appoint a hearing officer who has the powers set forth in Ind. Code § 33-23-5 et al. Pertinent to our present discussion, Ind. Code § 33-23-5-5(11) provides that a hearing officer may conduct an evidentiary hearing or trial. However, Ind. Code § 33-23-5-8(2) states that a hearing officer may not enter a final appealable order unless sitting as a judge pro tempore or a special judge. Finally, Ind. Code § 33-23-5-9(a) mandates a hearing officer to report his or her findings in an evidentiary hearing to the court and mandates the court to enter the final order, with one exception not applicable in this case.

In the present case, the hearing officer entered a purported final order on April 10, 2008, when he granted Serban's motion and dismissed Bedree's case. By doing so, the hearing officer overstepped the boundaries of his statutorily defined duties and grant of power. *See* Ind. Code § 33-23-5-8(2) and -9(a). Moreover, Serban does not assert, and we find no evidence, that the hearing officer was sitting as a judge pro tempore or special judge so as to be granted the power to enter a final appealable order pursuant to the exception contained in Ind. Code § 33-23-5-8(2).

Based upon the foregoing, we conclude that the trial court erred by denying Bedree's motion to vacate the order to dismiss. Accordingly, the trial court's order of May 5, 2008, denying Bedree's motion to vacate the order to dismiss is reversed.

Reversed.

RILEY, J., and BARNES, J., concur.